BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	
Numbering Policies for Modern Communications	WC Docket No. 13-97
IP-Enabled Services	WC Docket No. 04-36
Telephone Number requirements for IP-Enabled Services Providers	WC Docket No. 07-243
Telephone Number Portability	CC Docket No. 95-116
Developing a Unified Intercarrier Compensation Scheme	CC Docket No. 01-92
Connect America Fund	WC Docket No. 10-90
Numbering Resource Optimization	CC Docket No. 99-200
Petition of Vonage Holdings Corp. for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources	
Petition of TeleCommunication Systems, Inc. and HBF Group, Inc for Waiver of Part 52 of the Commission's Rules	

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA

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TABLE OF CONTENTS

Pages

The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these comments in response to the *Notice of Proposed Rulemaking, Order and Notice of Inquiry* (*NPRM, Order, NOI*) the Federal Communications Commission (FCC or Commission) released on April 18, 2013.[1] In the *NPRM*, the FCC seeks comment on a host of issues pertaining to whether the Commission should modify its rules regarding allocation of numbering resources so that Voice over Internet Protocol (VoIP) providers and providers of IP-enabled services may obtain telephone numbers directly from the North American Numbering Plan Administrator (NANPA) rather than obtaining those numbers through another service provider, as is done today.[2]

The CPUC comments here on many, but not all, of the issues raised in the *NPRM*. Silence on any issue should not be construed either as support or opposition to the FCC's proposed policy or rule.

I. DISCUSSION

Section 251(e) of the 1996 Federal Telecommunications Act gives the FCC "exclusive jurisdiction" over the North American Numbering Plan (NANP), but allows the FCC to delegate "to State commissions or other entities all or any portion of such jurisdiction." The Communications Act specifies that the administration in question is

[1] *In the Matter of Numbering Policies for Modern Communications*, et al, *NPRM, Order, and NOI*; WC Docket No. 13-97; et al (FCC 13-51) rel. April 18, 2013.

[2] Unless stated otherwise, the CPUC's use of the term "VoIP" is intended to refer to "interconnected VoIP providers," as the FCC uses that term.

over "telecommunications numbering."[3] Accordingly, in 1996, commensurate with the beginning of local telephone competition, the FCC authorized creation of an independent, non-governmental entity to perform the function of administering the North American Numbering Plan (NANP), meaning that NANPA oversees the national numbering plan.[4] Concurrently, the FCC delegated to the states authority to "resolve matters concerning the implementation of area codes."

During this same transition period, beginning in the mid-1990's, the onset of local telephone competition and the growing popularity of wireless service resulted in an explosive nationwide demand for telephone numbers. The demand was particularly acute in California, where, by 1999, the CPUC was about to open its 26th area code. Prompted by too many area code changes in too few years, causing significant public cost and inconvenience, the public reaction was strong and negative. In response, the CPUC petitioned for and received from the FCC express delegated authority to implement number conservation measures.[5] Subsequently, the FCC opened its Numbering Resource Optimization rulemaking (*NRO First Report and Order*) to establish national rules for the monitoring and allocation of numbers.[6] In the FCC's March 2000 *NRO Order*, California

[3] *See* 47 U.S.C. 251(e).

[4] As part of the implementation of the Telecom Act of 1996, the FCC issued the *Second Report and Order on Local Competition (FCC 96-333) adopted August 8, 1996.*

[5] *See* Petition for Additional Delegated Authority, filed April 23, 1999. The FCC granted the request on September 15, 1999.

[6] *Numbering Resource Optimization, CC Docket No 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000) (NRO First Report and Order).*

was required to conform its number conservation rules to the FCC's rules.[7] As a result of the combined CPUC rules and FCC rules, telephone numbers were allocated in a more rational manner, with carrier accountability for their inventories forming a key element of the new scheme. The CPUC did not open a new area code for a decade, and numbering issues became less pressing at both the state and federal levels.

In February 2004, the FCC released a *NPRM* on IP-Enabled Services, in which the Commission sought comments on "whether any action relating to numbering resources is desirable to facilitate or at least not impede the growth of IP-enabled services, while at the same time continuing to maximize the use and life of numbering resources in the North American Numbering Plan."[8] In the 2004 *NPRM*, the FCC noted that "packets routed across a global network with multiple access points defy jurisdictional boundaries" and sought comment on a network model of three layers: facility, protocol, and application. The CPUC commented that "[t]he FCC should exercise its authority under Title II over voice-grade telephony service over IP, and should not forbear from enforcing the provisions of Title II, to ensure that the fundamental policy objectives of the Act are realized." The *IP-Enabled Services* docket remains open, but the FCC to date has not determined how IP-enabled services or VoIP services should be classified – whether as common carriers under Title II of the Communications Act, or as information service providers. Instead, the FCC has relied on its ancillary authority under Title I of

[7] The FCC adopted as national rules some of the rules the CPUC had implemented pursuant to its delegated authority.

[8] *Notice of Proposed Rulemaking, In the Matter of IP-Enabled Services,* WC Docket No. 04-36, 19 FCC Rcd 4863 (2004) *(IP Enabled Services NPRM)*, CPUC Comments, May 28, 2004, ¶ 76.

the Communications Act to extend to VoIP providers a number of mandates that apply to common carriers, such as those pertaining to provision of 9-1-1 service, CALEA compliance, disabled access, and universal service and Local Number Portability obligations.[9]

Also in 2004, SBC IP Communications, Inc. (SBC IP) petitioned the FCC for a limited waiver of the Commission's rules that require each applicant for NANP resources to submit evidence that it is authorized to provide service in the area for which the numbering resources are being requested.[10] The FCC sought comment, and in Reply Comments in August of 2004, the CPUC opposed the request to "circumvent state numbering authority to which all other NXX code holders are subject." The CPUC strongly urged the Commission to deny SBC IP's Petition.

> Granting the requested waiver before resolving the broader VoIP issues raised in the Commission's *IP-Enabled Services* proceeding is a dangerous step towards allowing VoIP providers to reap an important benefit of being a carrier – direct access to numbering resources – without bearing a carrier's responsibilities.[11]

In February of the following year, 2005, the FCC granted the waiver (*SBCIS Order*), but set forth rules for the carrier to follow.[12] "Specifically, we require SBCIS to comply with the Commission's other numbering utilization and optimization

[9] Some of the FCC's earlier attempts to build meaningful regulation within Title I have been rejected by the Courts. *See, e.g., Comcast v. FCC*, 600 F3d 642 (DC Cir. 2010) (rejecting FCC's argument that order regulating the ISP's network management practices was authorized under Title I).

[10] Comment Sought On SBC IP Communications, Inc. Petition For Limited Waiver Of Section 52.12(g)(2)(i) Of The Commission's Rules Regarding Access To Numbering Resources, CC Docket No. 99-200, Public Notice, DA 04-2144 (rel. July 16, 2004)

[11] *Id.*, CPUC Reply Comments, p. 29.

[12] In the months between the filing of the Petition and issuance of the *Order*, SBCIP was acquired by SBCIS.

requirements, numbering authority delegated to the states, and industry guidelines and practices, including filing the Numbering Resource Utilization and Forecast Report (NRUF)."[13]

Following the SBCIS Order, many VoIP providers similarly requested direct access to numbering resources and/or limited waivers from the FCC rules. On April 5, 2005, the CPUC submitted comments on a petition from Vonage:

> In light of the Commission's decision to grant a limited waiver to one VoIP provider (subject to certain conditions), however, the CPUC does not oppose granting the same limited waiver to similar VoIP providers, under the same conditions. In addition, the CPUC urges the Commission to affirm that such VoIP providers (including SBCIS) are subject to state numbering requirements (established pursuant to authority delegated by the Commission) *to the same extent that other companies are subject to those requirements*. [Original emphasis.][14]

The CPUC also urged the FCC to address the scope of delegated authority to the states, if any, over VoIP providers, and the broader question of direct access to numbering in the *IP Enabled Services* proceeding. In late 2011, the FCC sought to refresh the record for the "Me-Too" Petitions for Waiver that followed the 2005 SBCIS

[13] Administration of the North American Numbering Plan, CC Docket 99-200, Order, FCC 05-20 (rel. February 1, 2005) (SBCIS Order), p. 4.

[14] RNK, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed February 7, 2005 (RNK Petition); Nuvio Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed February 15, 2005 (Nuvio Petition); UniPoint Enhanced Services d/b/a PointOne Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed March 2, 2005 (PointOne Petition); Dialpad Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 1, 2005 (Dialpad Petition); Vonage Holdings Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 4, 2005 **(**Vonage Petition); VoEX, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 4, 2005 (VoEX Petition), CPUC Comments, 11 April 2005, p. 3.

order.[15] In January of 2012, the CPUC commented on Vonage's petition for waiver, stating that the CPUC did not oppose the petition, but urged the FCC to update its rules to "benefit consumers and make more efficient use of numbers." Noting that the FCC has yet to resolve the regulatory status of VoIP or IP-enabled service providers, the CPUC continued to advocate that VoIP providers gaining direct access to numbering resources should "be subject to the same rules and authority, including the authority granted to the states, as other providers." [16]

It is against this backdrop that, in the above-captioned *NPRM*, the FCC proposes to "promote innovation and efficiency by allowing interconnected Voice over Internet Protocol (VoIP) providers to obtain telephone numbers directly from the North American Numbering Plan Administrator (NANPA) and the Pooling Administrator (PA), subject to certain requirements," and seeks comment on a "forward-looking approach to numbers for other types of providers and uses…"[17]

In addition, the FCC issued an Order directing "a limited technical trial of direct access to numbers" for 6 months for Vonage and other interconnected VoIP providers, who had originally petitioned for waiver in 2005. The FCC will provide waivers to "test whether giving interconnected VoIP providers direct access to numbers will raise issues relating to number exhaust, number porting, VoIP interconnection, or inter-carrier

[15] Six petitions for waiver were filed with the FCC in spring of 2005. See previous footnote.

[16] *Wireline Competition Bureau Seeks to Refresh Record on Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, Public Notice, 26 FCC Rcd 17039 (2011); CPUC Comments January 25, 2012, p. 4.

[17] *NPRM*, ¶ 1.

compensation, and if so, how those issues may be efficiently addressed."[18] The FCC also granted a waiver of section 52.15 (g)(2)(i) to allow TeleCommunications Systems, Inc. (TCS), a provider of Voice Positioning Center service, direct access to p-ANI[19] codes for 9-1-1 and E9-1-1 service.[20]

II. LEGAL ISSUES

A. FCC Authority

The CPUC does not dispute the FCC's exclusive authority over the NANP.[21] The underlying question, however, is whether the FCC may lawfully allow entities that are not "telecommunications carriers" or which do not provide "telecommunications service" to obtain numbers from the NANP. The FCC acknowledges in the *NPRM* that it "has not addressed the classification of interconnected VoIP services, and thus retail interconnected VoIP providers in many, but not all, instances take the position that they are not subject to regulation as telecommunications carriers, nor can they directly avail themselves of various rights under sections 251 and 251 of the [1996 Federal Telecommunications] Act."[22] More specifically, VoIP providers state publicly that they are "interstate, information service" providers.[23]

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[18] *Id*, ¶ 2.

[19] A p-ANI ("pseudo-Automatic Number Identification") number is a telephone number used to support routing of wireless 9-1-1 calls. It may identify a wireless cell, cell sector or Public Safety Answering Point (PSAP) to which the call should be routed.

[20] *NPRM*, ¶ 3.

[21] *See* § 251(e) of the 1996 Telecommunications Act: "The Commission shall have exclusive jurisdiction over ….[the NANP]."

[22] *Id*, ¶ 6. The CPUC notes, for example, that the FCC is proposing to allow VoIP providers and IP-enabled services providers who interconnect under § 251 of the Act to participate in the Commission's envisioned intercarrier compensation scheme, without deeming those providers to be

The FCC's solution to this problem is not, as California and numerous other parties have urged for the past several years, to address directly the classification of VoIP and IP-enabled services. Rather, in the *NPRM*, the FCC proposes "*for purposes of this part*" to deem VoIP providers to be "telecommunications carriers," and VoIP service to be "telecommunications service."[24] (Emphasis added.) This proposal suggests a convoluted way to provide VoIP providers, again, the benefits of Title II classification without actually classifying VoIP providers as Title II telecommunications carriers.

While moving in the right direction, that is, towards classification, the FCC's action appears to interpret the Communications Act in a manner inconsistent with the statute's plain language. The proposal seems to circumvent Congressional intent, which was to create a regulatory construct for "telecommunications carriers" and "telecommunications service."[25] By treating VoIP providers as entities subject to the Act without actually finding that those entities meet the relevant statutory definitions of "telecommunications carrier" and "telecommunications service" in all respects, the FCC's action could easily lead to absurd results.[26] As the CPUC noted in 2004, by not addressing the classification issue, the FCC is also not ensuring "that the fundamental

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"telecommunications carriers," or the service they provide to be "telecommunications service." But here, the FCC is proposing a different solution.

[23] *See* e-mail from AT&T to the CPUC's Consumer Affairs Branch, responding to a CPUC data request seeking the number of VoIP customers AT&T serves. A copy of this email is attached hereto as **Appendix A**.

[24] *NPRM,* Appendix A, Proposed Part 52(1)(i) and (j), respectively.

[25] "Regardless of how serious the problem an administrative agency seeks to address, however, it may not exercise its authority 'in a manner that is inconsistent with the administrative structure that Congress enacted into law". *ETSI Pipeline Project v. Missouri, 484 U.S. 495 (1988).*

[26] *See Ma v. Ashcroft,* 361 F.3d 553 (9th Cir. 2004), finding outcome of agency action at odds with significant part of overarching immigration policy, leading to "absurd results."

policy objectives of the Act are realized," at least in part because it is not ensuring that VoIP providers share the burdens as well as the benefits of regulation.

B. Documentation Required to Obtain Numbers

In the *NPRM*, the FCC notes that many VoIP providers either do not seek state certification, or that state commissions are prohibited by state law from licensing VoIP providers.[27] Accordingly, the FCC notes, interconnected VoIP providers cannot obtain numbers directly from the NANPA because they cannot provide the evidence of state certification required by FCC numbering rules.[28] The FCC seeks comment on what documentation, if any, a VoIP provider should give the NANPA as "evidence of authority" to provide service and thus, to obtain numbers.[29]

This request poses a conundrum. We do not see how an entity not authorized by a state commission to provide service, and possibly having no authority from any other entity, including the FCC, could show "evidence of authority to provide service." Notwithstanding the apparent disconnect in the FCC's request, the CPUC recommends that, in California, an interconnected VoIP provider could show evidence of compliance with P.U. Code § 285, pursuant to which VoIP providers are required to collect and remit

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[27] *NPRM*, ¶ 20.

[28] *Id.*, ¶ 7; *see* 47 C.F.R.52.15(g)(2)(i): "Applications for initial numbering resources shall include evidence that:

…. (i) The applicant is authorized to provide service in the area for which the numbering resources are being requested."

[29] *Id.*, ¶ 21.

to the CPUC universal service program surcharges.[30] In addition, the CPUC recommends, that states "lacking authority to provide certification for interconnected VoIP service," be given "a formal opportunity to object to the assignment of numbers to these providers," as states do today with requests from telecommunications carriers.[31] In the past, for example, the CPUC has objected to carrier requests for additional numbers because the carrier had reported on its utilization for various reasons, primarily because codes (rather than blocks) were requested in areas not needing new codes.

III. NUMBERING ADMINISTRATION REQUIREMENTS

A. Intermediate Numbers

In its initial *Order* in the NRO Docket, issued in March 2000, the FCC established several categories of numbers, including categories for "assigned", "aging", "available", "reserved", "intermediate", and "administrative" numbers. In the *NPRM*, the FCC asks "how we could revise our definition of 'intermediate numbers' or 'assigned number' to ensure consistency among all reporting providers."[32]

California has long expressed its frustration with carrier treatment of intermediate numbers.[33] As the FCC suggests, service providers have widely differing interpretations

[30] The CPUC's recommendation here is to be taken in light of its ongoing concern regarding the fact that the FCC has not classified VoIP. The use of a § 285 compliance registration does not solve the fundamental problem of classification.

[31] *Id*.

[32] *Id.*, ¶¶ 22-23.

[33] In 2002, California and Michigan filed a "Minority Report" to a NANC Working Group report on intermediate numbers. (A copy of that report is attached to this pleading as **Appendix B**.) The Minority Report provided alternative suggestions as to the treatment of intermediate numbers. The FCC did not modify its rules for intermediate numbers, and there remains no transparency regarding how those numbers are used.

of the definition of “intermediate” number, and of the requirement to report numbers in the intermediate category. CPUC staff has found widely different reports on intermediate number use by those companies to which the NANPA allocates the numbers, and those entities to which the numbers are ultimately dispensed. Some facilities-based carriers, whether they hold intermediate numbers in their inventories or allocate them to another service provider, treat all of their intermediate numbers as “assigned.” Others do not. Accordingly, neither the NANPA nor the states have any real understanding of how many numbers are “intermediate” or are in fact “assigned.”

To compound the ambiguity, dispensing service providers have no responsibility to ensure compliance with number reporting and utilization rules. This leaves the intermediate numbers category a black hole where numbers cannot be tracked because under the existing rules, once those numbers are assigned to a secondary carrier, neither carrier has responsibility to account for efficiently using the numbers. California recommends that the FCC eliminate the category of “intermediate” numbers because the practice of accounting for those numbers is applied in grossly inconsistent ways. If, however, the Commission elects to retain that category, then the FCC should modify its rules so that the service provider to which numbers are dispensed would be responsible for their number use and reporting to the NANPA. In other words, the “end user” for numbering purposes should be defined as the retail end user. Service providers should not be able to hold onto numbers without assigning to them to end users, as many service providers receiving numbers through another service provider apparently now do.

B. State Role and Geographic Decoupling

The FCC proposes that interconnected VoIP providers be allowed to obtain telephone numbers from any rate center unless a state commission finds that allowing direct access in non-pooling rate center would contribute substantially to number exhaust.[34] The Commission poses very specific questions, only some of which the CPUC can answer.

Does it make sense to differentiate between traditional carriers and interconnected VoIP providers in terms of the rate centers from which they can request numbers? California believes that to the extent possible, consumers should benefit from advancements in telecommunications technology. This means that where geography is irrelevant to the service provider, similarly, it should be irrelevant to the customer. This is already true for customers of wireless carriers; the area code in which the wireless customer obtains a number may matter, but for the most part, the rate center does not. Accordingly, the wireless carrier can assign numbers within an area code and across rate centers in a far more efficient manner than can traditional carriers.

Is it important for VoIP providers to obtain local telephone numbers that correspond to the location of the subscriber? Prefixes used to be identified with specific communities, but with more and more providers in the mix, prefixes are no longer immediately recognizable as being associated with any particular geographic location. The telecommunications industry is in the process of decoupling numbers from

[34] *Id.*, ¶ 26.

geography, a step that must be taken to preserve the numbering plan. In so doing, the only remaining relevance a prefix poses to a consumer is whether friends, family members, and business associates incur a charge to reach the consumer. Given the network architecture of VoIP providers, there is every reason to conclude that VoIP providers can ensure call routing so that all terminating calls would be local, thus making the acquisition of local numbers irrelevant.

Would this approach put consumers in rate centers not subject to pooling at a disadvantage by limiting their access to innovative services?

California's non-pooling rate centers are already at a technological disadvantage because this limits their access to innovative services. Customers in non-pooling rate centers have been left behind not only because carriers in those rate centers do not pool, but also because they do not port numbers. The CPUC argued long and hard over a decade ago for the FCC to require wireless providers to implement number pooling.[35] The Commission did adopt a number portability roll-out schedule for wireless providers, and customers have been the direct beneficiaries of that policy. Today, customers in non-pooling rate centers, which in California are predominantly in rural areas, are locked into one provider and cannot benefit from the degree of competition that accompanies number portability.

[35] Thousands-block number pooling is a process by which the 10,000 numbers in a central office code (NXX) are separated into ten sequential blocks of 1,000 numbers each (thousands-blocks), and allocated separately within a rate center. Service providers having unused blocks within the central office codes donate blocks to the pool. Service providers needing resources within the specified rate center are allocated blocks from the rate center number pool.

If VoIP services were to be offered on a geographically-neutral basis, then customers in non-pooling rate centers would be able to obtain service from a VoIP provider. Without a companion change in FCC rules, however, customers seeking to change service providers would not be able to port their number to the VoIP provider. If customers cannot port their numbers, then competition suffers. The CPUC made this same argument about the need for wireless portability, and the argument is just as applicable to VoIP providers.

In comments filed in January 2012, the CPUC proposed that state commissions be allowed to determine the rate center from which numbers can be assigned to VoIP providers.[36] The CPUC proposed this because VoIP providers, unlike traditional wireline providers, do not need to associate a number with a specific geographical location designated by a rate center. California appreciates the Commission's response to our concerns about rural rate centers, but we wish to broaden our concerns to all oversubscribed rate centers.

CPUC staff has performed an analysis of the status of the number pool in the 713 rate centers throughout California that require pooling. Our staff has found that the following rate centers have more than 90 blocks in their numbering pools: Chico (530 NPA), San Luis Obispo (805 NPA), La Habra (323 NPA), Los Angeles (213 NPA), and Palm Springs (442/760 NPAs). San Luis Obispo actually has 242 blocks in its pool, and

[36] *NPRM*, ¶¶ 26, 27, 28, referring to the CPUC's January 25, 2012, Comments in response to Wireline Competition Bureau Seeks to Refresh Record on Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources, CC Docket No. 99-200, Public Notice, 26 FCC Rcd 17039 (2011).

a population of 45,525. The CPUC staff's analysis as of May 5, 2013, found that 58% of the California Available blocks are in rate centers with pools larger than 19 blocks.

As long as numbers are rate-center based, large quantities of numbers will be stranded unless service providers are directed to rate centers where numbers are oversupplied. Conversely, if service providers, particularly VoIP providers who are not constrained by geography, continue to take numbers without regard to existing number pools, then the imbalance in the size of the numbering pool will continue to grow and many more numbers will be stranded. For this reason, the CPUC proposes that VoIP number requests be steered to rate centers where the pools have twenty or more blocks, and no VoIP number requests should be accommodated in non-pooling rate centers. California also proposes that the FCC redefine "stranded" numbers to include rate centers with more than 19 blocks in the associated number pool.

Also in January 2012 comments, the CPUC proposed that all calls to VoIP providers be deemed "local" for numbering administration purposes.[37] The only further comment the CPUC offers here is that, as discussed above, the FCC should broaden the definition of stranded numbers to cover any rate center with more than 19 blocks in its pool

C. Facilities Readiness

The FCC's numbering use rules are premised on the fact that carriers obtaining numbers must have physical facilities to which those numbers are assigned in the

[37] *Id.*, ¶ 28. The net effect of this type of routing would be to eliminate the capability to charge for intra-LATA long distance.

network. NXX codes are programmed into the Local Exchange Routing Guide (LERG) as being in the inventory of a facilities-based carrier which, in turn, may allocate codes to a non-facilities-based carrier. Notwithstanding the fact that a non-facilities-based carrier may be using the numbers, those codes show up in the LERG as "assigned" to the facilities-based carrier. Given these facts, we note that the FCC seeks comment on whether to retain the "facilities-readiness" requirement for carriers trying to obtain numbers.[38] The CPUC recommends that if the FCC decides to allow service providers with no physical facilities to obtain numbers directly from the NANP, the FCC must fashion an alternative means of ensuring that numbers can be tracked in some manner other than just on paper. Developing one or more alternatives could be an assignment for the North American Numbering Council, or perhaps the FCC could convene a working group to look at this question. However the FCC approaches finding a solution to this problem, the states should be at the table, and California in particular would like the opportunity to participate.

D. Timing of Number Requests

The FCC seeks comment on whether to require interconnected VoIP providers to give 30-days' notice to the relevant state commission of a request for numbers from the NANPA, as SBCIS is required to do.[39] The advance notice would allow the state commission to advise the VoIP provider as to which rate centers have excess blocks in the pool. In addition, the advance notice would allow the state commission the

[38] *Id.* ¶ 29.

[39] *Id.*, ¶ 31.

opportunity to determine, as it does today with other service providers, whether the request is problematic for any reason, such failure to submit timely NRUF reports, or the provider has not met the utilization threshold necessary to obtain additional numbers. The CPUC supports this proposal, and urges the FCC to require no less than 30-days' notice to the relevant state commission.

E. Number Utilization

The FCC's current utilization threshold is 75%, which means that a carrier must show that it has used 75% of the numbers in its inventory before it can obtain new numbers. In its petition to the FCC for direct access to numbers, Vonage has offered "to maintain at least 65 percent number utilization across its telephone number inventory"[40] and in the NPRM, the FCC has proposed Commission oversight at 90-day reporting intervals. California has proposed a higher threshold, at least 75%, multiple times, beginning with our 1999 petition for numbering authority, and the CPUC recommends that the FCC adopt a threshold of no less than 75% for VoIP providers, if they are to be given direct access to numbers from the NANP. Given that VoIP providers are not subject to the geographical constraints of traditional providers, they are positioned to maximize utilization within the current system. The CPUC note, also that wireless providers are not subject to the same geographical constraints as traditional providers, and many of them, while working under existing rules, have utilization levels higher than 75%. The CPUC suggests that the Commission should consider phasing in a higher

[40] *Id.*, ¶ 32.

threshold, over time, especially if the FCC adopts other measures that would ensure more accurate tracking of number use.

More fundamentally, this question again raises the broader issue of how VoIP providers are treated from a regulatory standpoint. If VoIP providers are subject to lesser regulation than traditional providers, one of the benefits they enjoy as a result of that lesser regulation is associated lower operating costs. An imbalance in costs drives business towards the lowest cost solution; VoIP providers would have an advantage in the marketplace because of their lower costs – costs associated with numbering and with regulatory compliance generally. To ensure that competition in the marketplace is not skewed, the FCC must resolve the larger question of how VoIP providers should be classified, and should ensure that the costs of maintaining the NANP are borne by all providers.

F. Wisconsin Proposal

The Wisconsin Public Service Commission (PSC) proposes a 3-pronged approach to enhance the ability of state commissions to effectively oversee number use, which will serve to promote better number utilization.[41] California supports the Wisconsin PSC's proposal, which requires provision of information to the relevant state commission, consolidation and reporting of numbers under the OCN, provides customers the ability to access N11 numbers, and maintains the original rate center designation of all numbers in the provider's inventory. The CPUC also suggests that the contact information provided to the state commission should remain current at all times. And, the CPUC specifically

[41] *Id.*, ¶ 34

supports retention of the original rate center designation to the extent the FCC retains rate centers.

G. Competitive Impact

The FCC seeks comment on whether the proposal to allow direct access to numbers for interconnect VoIP providers "might affect competition, and if so how."[42] For competition to be enhanced, the FCC must adopt rules that do not favor one category of providers over another. But, the FCC at present does not seem to have sufficient information to determine what effect on competition would result from allowing VoIP provider direct access to numbers. Accordingly, the CPUC encourages the FCC, as one element of its trial evaluation, to examine what effect VoIP direct access to numbers may have on the state of competition.

IV. ENFORCEMENT OF VOIP PROVIDER'S COMPLIANCE WITH NUMBERING RULES

A. FCC Certification

The FCC seeks comment on whether, for purposes of exercising its forfeiture authority, it should require VoIP providers to obtain some form of certification from the Commission.[43] The CPUC notes that since many states cannot license VoIP providers, it would be useful for the FCC to issue some form of certification which the providers must obtain before they can get direct access to numbering resources. In particular, California supports individual certification as opposed to "blanket authority" that would serve as

[42] *Id*, ¶ 35.

[43] *Id*., ¶ 37.

"evidence of authority to provide service that is required under section 52.15(g)(2)(i) of our rules." Here, again, the FCC is proposing to treat VoIP providers as telecommunications service providers for a very narrow purpose. The concerns cited in the "Legal Issues" section above apply equally here. Leaving aside the jurisdictional question, California opposes the "blanket authority" as it would not provide any company specific information to the NANPA or to any state acting, pursuant to delegated numbering authority.

B. Imposition of Penalties and Response to Bad Actions

The Commission seeks comment on "whether there are ways to ensure that VoIP providers are subject to the same penalties and enforcement processes as traditional carriers."[44] It is unclear to the CPUC exactly what the FCC is asking here. Is this a broader inquiry regarding more general enforcement authority, or is the question limited to numbering authority? Whatever the inquiry, California supports imposition of penalties on VoIP providers on the same basis as they are imposed on traditional providers.

The FCC also asks whether VoIP providers should be prohibited from obtaining direct access to numbers if they are "red-lighted" by the FCC for unpaid debts or other reasons.[45] California recommends that the FCC prevent VoIP providers from obtaining new numbers for the same reasons that traditional service providers would be blocked from access to numbers.

[44] *Id.*, ¶ 38.

[45] *Id.*, ¶ 39.

V. LOCAL NUMBER PORTABILITY

A. VoIP Providers Should Port Numbers

The FCC proposes that VoIP customers should enjoy the benefits of local number portability regardless of whether the carrier obtains numbers directly from the NANPA or through a carrier partner.[46] All numbers assigned to two-way telecommunications devices should be portable; the source of numbers should not be the basis for any disparate treatment. We note, again, however, that whether VoIP providers can obtain numbers lawfully rests on whether they are deemed to be "telecommunications carriers."

B. Geographic Limitations on Ports

The FCC asks what, if any, geographic limitations should apply to ports between, on the one hand, either a wireline carrier or a wireless carrier, and on the other, an interconnected VoIP provider that has obtained its numbers directly from the NANPA.[47] The CPUC here provides responses to some of the specific questions the FCC poses.

Should porting in these circumstances be limited to where the interconnected VoIP provider's coverage area overlaps with the geographic location of the customer's wireline rate center, as with wireline-wireless intermodal porting? Consistent with California's recommendation that all VoIP service should be deemed local for numbering purposes, California recommends that ports to VoIP providers should not be constrained by geographic considerations. Since all VoIP service should be local, the customer location should not be a factor to the VoIP provider; accordingly, geography should be

[46] *Id.*, ¶ 61.

[47] *Id.*, ¶ 64.

transparent to a customer wishing to port to a VoIP provider. Porting from a VoIP provider is a different matter. Any port out from a VoIP provider to a wireline provider would, by necessity, have to be within the wireline provider's territory. The same is true today for wireless-wireline ports; the geographical limitations on the wireline provider's network constrain where the wireless customer can port a specific number.

Should porting in these circumstances be limited to situations where the interconnected VoIP provider has facilities or telephone numbers in the same rate center? The CPUC believes that rate centers should be irrelevant to VoIP service providers, for the reasons previously noted.

Are geographic limitations on porting directly between an interconnected VoIP provider and another carrier necessary? Constraints on porting between VoIP providers and other carriers should be handled as described above.

VI. NOTICE OF INQUIRY

The Technological Advisory Council (TAC) has made recommendations to the Commission regarding the future of numbering and in the NOI, the FCC seeks comment on those recommendations.[48] California generally supports eliminating the geographical component of numbers in the NANP, although in a modified sense so as to retain state oversight of number utilization.

A. Full Decoupling of Geography from Numbers

The FCC asks what are the practical and policy implications of transitioning numbers to non-geographic distribution, and specifically, what would be an appropriate

[48] *Id.*, ¶ 118.

timeframe for doing.[49] The CPUC recommends the elimination of rate centers and LATAs within the next three to five years. This phase-in period would allow service providers adequate time to undertake technical steps necessary to accommodate the change. In addition, this time frame would enable some states, including California, to avoid opening new area codes currently slated for relief in that same period. Further, the FCC should consider, at a minimum, eliminating rate centers and LATAs if the FCC adopts a bill-and-keep intercarrier compensation scheme, as in a separate docket it has proposed to do.[50] A bill-and-keep intercarrier compensation scheme would not require actual rating of calls by distance, with those distances being measured from rate center to rate center.

The FCC seeks comment on the benefits and limitations associated with the current number assignment policy.[51]

Are there advantages to retaining geographic number assignment even as the industry moves increasingly to all-IP systems? The CPUC observes that historic reliance on a prefix as a simplified way of identifying a service area is not a sufficient reason to maintain the geographic association of numbers, especially in light of the massive technological changes that have unfolded since the NANP was standardized in 1947.

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[49] *Id*., ¶ 120.

[50] *Connect America Fund*, WC Docket No. 10-90, A *National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, H*igh-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, F*ederal-State Joint Board on Universal Service*, CC Docket No. 96- 45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

[51] *NPRM*, ¶ 121.

The current system contains inherent inefficiencies that will only serve to strand increasing quantities of numbers if the geographic association of numbers is maintained. Alternatives exist for identifying a customer's location, including the address method that wireless carriers use today. Employing these alternatives would not lead to the number use inefficiencies that exist today because of reliance on geography as a number identifier.

Is there a benefit to being able to associate a telephone number to a particular area? It may be important to a business to be identified as local. Yet, the CPUC is not persuaded that the telephone number is the only way to achieve that goal. Businesses can promote the local nature of their services or products through very localized advertising. As discussed above, continuing the existing inefficient system of allocating numbers by geography would threaten the long-term viability of the numbering plan, and the availability of numbers for new applications that rely on obtaining numbers.

The Commission seeks comment on the costs and benefits of assigning numbers without regard to geography.[52]

Would decoupling numbers from specific geography slow, or accelerate, number exhaust in certain area codes, and should such exhaust matter in a world where numbers are no longer tied to a specific geography? The CPUC has observed that carrier retention of numbers is not rational. Carriers will hold onto numbers for a variety of reasons, notwithstanding state commission requests that additional numbers be donated to

[52] *Id.*, ¶ 122.

a number pool. For example, the CPUC has observed service providers vastly overstating customer requirements in order to retain numbering resources.[53]

Any new means of allocating numbers, not based on geography, should incorporate safeguards against hoarding and premature exhaust, which often is prompted by the carriers' collective belief that some numbers are more desirable than others. The FCC should identify methods for evaluating whether service providers are hoarding numbers. *What other considerations might weigh for or against moving to geographically assigned numbers?* Numbers currently have a recognized geographic component, and customers have an emotional attachment to their prefix or area code. In January of this year, the CPUC received the following comment on the proposal to implement a new area code in the current 415 (San Francisco) area code. "I am a traveling artist and 415 identifies my artistic identity when I am booked for shows. It is part of the language I use on stage." Another commenter wrote: "San Francisco is famous for the 415, my friends own a clothing store called 415."

While the emotional attachment to numbers runs counter to the more efficient number use, the emotional component cannot and should not be ignored. Customer concerns such as those expressed in comments the CPUC has received must be addressed and alternatives should be presented to the public in response to these concerns. At the same time, the public should be informed that continued association of specific prefixes with specific locations will lead to premature exhaust of the NANP.

[53] California has observed, for example, that numbers in certain recognized area codes may exhaust prematurely; many distinctive NPA such as 212 and 415 already have exhausted. On the other hand, the 213 NPA has a surplus of numbers.

Would non-geographically assigned numbers increase the risk of fraud or spoofing, or make enforcement more difficult? Transparency regarding which service provider is assigning numbers to end users could in large part mitigate concerns about fraud or spoofing. California cannot offer any specific data to support this proposal, but encourages the FCC to consider greater transparency as a means to prevent, and to reduce the risk of, fraud and spoofing. Further, with greater transparency, once exposed, a service provider would be obligated to withdraw any number(s) used to perpetrate a fraud.

What lessons can we derive from the distribution of toll-free numbers, which are not assigned on a geographic basis, to guide us in a possible transition for non-toll-free numbers? The CPUC is aware that toll-free number hoarding exists. The design of new numbering system rules should anticipate abuses and include mechanisms to prevent abuse. In addition, the FCC should establish processes to identify abuse(s) quickly, and should adopt rules for responding to those abuses.

The Commission asks how a revised number assignment policy might be administered.[54] Specifically, the FCC seeks comment on whether it should create a unified or national numbering regime that would apply equally to all service providers, regardless of location.

How should this regime incorporate the current authority of the various state commissions? In California's view, we already have a national numbering regime, but numbers are dispensed on the basis of geography. A newly-designed number system

[54] *Id.*, ¶ 123.

might allow for numbers to be dispensed area code-wide, by state, or on a national basis. If numbers are dispensed by area code or on a statewide basis, then states could continue to monitor utilization within specific area codes, as they do today, and state designations would be retained. If state designations are not retained, then the process of monitoring number use would be radically altered, with likely negative consequences. If the states are not monitoring number use, then either the FCC or the NANPA would have to undertake that task, requiring additional staffing at the FCC or additional funding for the contractor who administers the NANP.

For the purpose of number administration, what if any relevant distinctions between service providers would warrant different treatment? As discussed above, numbers associated with major cities, such as 213 (Los Angeles), 415 (San Francisco), and 212 (New York) may well remain more desirable. If numbers continue to be assigned on a geographic basis, then a drain on numbers associated with desirable area codes would follow, resulting in more area codes being added to serve those cities. Over time, the additional area codes would dilute any original area code-city relationship. Further, if area codes are completely decoupled from geography, there would be no relationship between an area code and a city or any other location. Prefixes in the 415 area code could be assigned to Palm Springs or to Yreka.

The FCC seeks comment on the impact on other regulatory entities if the current regime for telephone number assignment is modified.[55]

[55] *Id.*, ¶ 124.

How would a move away from geographic number assignment impact states; role in numbering administration, which currently includes important functions such as consumer protection and area code relief planning? If numbers are totally decoupled from geography, that is, if all numbers are assigned on a completely nationwide basis, then states would no longer have any ability to monitor number use within state boundaries, and to ensure that number conservation measures are being followed. Carriers may support this outcome because it would virtually ensure that no one would be watching the number store (absent significant beefing up of the FCC numbering staff or expansion of the NANPA's contract).[56] But, as California observed repeatedly in numerous sets of comments leading up to the adoption of the current numbering rules, the public suffers when numbers are used inefficiently because inefficient number use leads to a need for more area codes. The opening of every new area code causes public inconvenience and expense. A major component of the FCC's existing numbering scheme involves the states in overseeing number use, and the result has been much greater efficiency. If the FCC abandons that approach going forward, inefficiencies will abound.

If the FCC only partially decouples numbers from geography, that is, if it establishes a system for dispensing numbers by state or by area code, then states would retain their oversight role.

[56] It may not be feasible or lawful for the FCC to delegate its enforcement authority to a third-party vendor, such as the NANPA.

How would it impact numbering administration worldwide? Assuming that geographic decoupling is accompanied by individual telephone number (ITN) assignment rather than the current assignment in 1000-blocks, the current numbering infrastructure would undergo a seismic shift. Utilization thresholds would become irrelevant because service providers would only retain in their inventories numbers that are administrative or assigned, either to other service providers or to end users. The NANPA could hold aging numbers, as well as reserved numbers, with the reservation automatically dropped after 180 days.

Would adjustments that the Commission makes to geographic numbers adversely affect international services that utilize telephone numbers? The answer to this question depends on how the change to the numbering system is effected. Calls out of the United States likely would not be affected, but calls into the U.S. could be affected.

The FCC asks whether it should consider other long-term changes to the basic telephone numbering system, other than shifting away from geographic assignment.[57]

In addition to the recommendations set forth above, the Commission should consider adopting a single dialing protocol that would apply in every locality. California has been hesitant to support a unitary dialing plan in the past because of local concerns. But in light of the now global nature of the economy, local disparities in dialing patterns might not make sense. For example, in California, Pacific Telephone elected many years ago to implement a 1+10 digit-dialing pattern for inter-NPA calls, and all other carriers followed. Even within California, areas with one or more overlays must dial 1+10 digits,

[57] *Id.*, ¶ 132.

while in other areas, the pattern is just 7 digits. In many other states, 1+ is an indicator to the switch and the customer that the caller is making a toll call. But in California, a caller can dials 7 digits for both a local and for a toll call.

Individualized local dialing patterns are less defensible in an era of national and global telecommunications. In addition, a single dialing pattern would mitigate public angst over introduction of new area codes. If everyone were dialing 10 digits, then adding a new overlay area code would not cause public distress – everyone would already be used to dialing 10 digits. California is aware of claims that many Americans have a home or business phone in one area code, and a wireless number in a different area code. Assuming this to be true, the need to dial 10 digits on every call is no longer unusual.

Should the FCC decide to move towards a unified dialing plan, however, the CPUC recommends that the Commission adopt a 5-year phase-in period to allow states to move that in that direction on their own, and to educate the public about the change.

VII. CONCLUSION

The CPUC submits these comments to address the myriad issues raised in both the *NPRM* and the *NOI* in the above-captioned docket. California hopes that, as it did over a decade ago in crafting a numbering resource utilization scheme, the FCC will seek to work closely with the states to craft and oversee a new scheme for number use.

Respectfully submitted,

FRANK R. LINDH
HELEN M. MICKIEWICZ

By: /s/ HELEN M. MICKIEWICZ
_____
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July 19, 2013

APPENDIX A

From: BERRY, MARK [mailto:mb2861@att.com]
Sent: Friday, June 21, 2013 3:39 PM
To: Sukhov, Michael
Subject: AT&T Response to June 6 and June 14 Letters Regarding Data Request CAB-LEP-13-01

Dear Michael,

I am writing to respond to your letters dated June 6 and June 14, 2013 regarding Data Request CAB-LEP-13-01 (hereinafter "Data Request"). The Data Request seeks certain Voice over Internet Protocol ("VoIP") information, purportedly for the purpose of preparing Limited English Proficient ("LEP") data required by CPUC Resolution CSID-003 (see your letters of 3/14/13 regarding CLC 5002 5/24/13 regarding LEC 1001). As explained further below, AT&T continues to believe the Data Request, to the extent it seeks to compel the production of VoIP data, is overbroad, unduly burdensome, and legally improper.

As the Commission itself has recognized,

The Commission's authority [to compel the production of data], of course, is not without its limits. Inquiries of Commissioners, Commission officers, and its staff must have some rational relationship to public utility regulation. (Resolution ALJ-195, p. 3.)

Accordingly,

Commission staff information requests directed to utilities and other respondents must be rationally related to public utility regulation, as vested in the Commission by the state constitution and statutes or delegated to the Commission by federal law or federal agency order. (Resolution ALJ-195, p. 6.)

Contrary to these principles, the VoIP information sought is not "rationally related to public utility regulation." *First*, and by the very terms of the rules themselves, VoIP services are not regulated by the Commission's LEP rules. The LEP rules apply only to "telecommunications services" (*see* D.08-10-016, App. B.), and as explained in AT&T's prior objection, VoIP is an interstate, information service. VoIP is not a telecommunications service. *Second*, because it is an interstate, information service, the Commission is preempted and prohibited by the FCC from regulating VoIP service. *Third*, Public Utilities Code section 710 plainly and clearly prohibits the Commission from regulating VoIP services, so information requests relating to VoIP services cannot, as a matter of law, "be rationally related to public utility regulation."

The exception to section 710 cited in your letter, subsection 710(f), does not grant the Commission authority to compel the production of VoIP data. That subsection, in pertinent part, only permits the Commission to "continue to monitor and discuss VoIP services." "Monitoring" means watching, not investigating. The Commission is free to use staff resources to monitor developments regarding VoIP services, and "discuss" those developments, but cannot investigate or legally compel the production of VoIP data. Investigation of VoIP services, and the compelled production of VoIP data, have no "rational relationship" to the Commission's authority to regulate. As courts have recognized, attempts to investigate outside an agency's

authority may even violate the Fourth Amendment of the United States Constitution. (*See*, e.g., Brovelli v. Superior Court, 56 Cal.2nd 524, 529 (1961) and cases cited therein.)

Accordingly, AT&T continues to object to the production of VoIP-related information, and requests a "meet and confer" session with Division staff pursuant to Resolution ALJ-195 (see p. 6) to attempt to resolve this matter. This issue is appropriate for such a "meet and confer" session because it has not previously been resolved by Commission precedent.

Sincerely,

Mark Berry
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APPENDIX B

State of California **Public Utilities Commission**
San Francisco

MEMORANDUM

Date : January 15, 2002

To : Robert Atkinson, NANC Chair

From : California Public Utilities Commission (CPUC) and Michigan Public Service Commission (MPSC)

Subject : Minority Report on Intermediate Numbers

The Numbering Team in the CPUC's Telecommunications Division and staff at the Michigan Public Service Commission have reviewed the analysis and proposals contained in the NANC IMG Review of Intermediate Numbers, presented at the September 24, 2002 and November 19, 2002 NANC meetings. CPUC and MPSC staff also participated in an IMG conference call on January 13, 2003.

The CPUC and MPSC agree with the findings of the IMG Report that carriers apply the FCC's definition of intermediate numbers in very different ways. The CPUC has conducted two carrier number inventory audits in California, and can confirm the IMG Report's finding on this point. Consequently, the CPUC and MPSC agree with the IMG that clarification of the definition of intermediate numbers, and corresponding changes in NRUF reporting requirements are warranted. Therefore, the CPUC and MPSC agree with the IMG that the appropriate means for refining the definition of intermediate numbers would be an FCC rulemaking process.

At the same time, the CPUC and MPSC disagree with the specific revisions to the definition of intermediate numbers that the IMG recommends in its report. The CPUC and MPSC believe that the FCC's existing definition and the IMG's proposed revisions reflect the same deficiency. Neither definition explains that there are two types of intermediate numbers – those assigned to customers by carriers and those assigned to customers by non-carrier entities. The distinction is crucial as it impacts reporting requirements, and the regulators' ability to monitor utilization effectively. The CPUC and MPSC offer as a minority report the following alternative proposals, which distinguish the two types of intermediate numbers.

1. **The CPUC and MPSC recommend the following modified definition of intermediate numbers to replace CFR 47§52.15(f)(1)(v):**

   Intermediate numbers **are numbers assigned by the national administrator (NANPA or PA) to a carrier (Party A) that in turn**

dedicates these numbers for use by another entity (Party B). Party B is responsible for the assignment of the numbers to end-user customers. Intermediate numbers fall into two categories: 1) numbers that Party A assigns to a non-carrier Party B and which remain in Party A's inventory even after Party B assigns them to end-user customers; and 2) numbers that Party A provides to a carrier Party B that assumes the numbers as part of Party B's inventory, whether assigned to end users or not. Party A will retain direct knowledge of the status of numbers in category 1, but will have no direct knowledge of the status of numbers in category 2. Numbers in both of these categories are designated by Party A as intermediate and are not available to Party A for assignment to its end-user customers. Thus these numbers can be removed from the denominator when calculating Party A's utilization rate.

2. **The CPUC and MPSC recommend the following changes to NRUF reporting requirements.**

   - The IMG recommends that for NRUF purposes, the SP receiving the resource directly from NANPA/PA should identify the codes/blocks that are under the assignment control of another (secondary) entity.
   - If, as identified in the revised definition of intermediate numbers above, Party B is a carrier, Party B is required to have an OCN, and Party A should report the OCN of Party B in its NRUF. If Party B is a non-carrier entity, and is therefore not required to file an NRUF, then Party A should report Party B's numbers as intermediate numbers until Party B assigns the numbers to an end-user, when Party A would then report Party B's numbers as assigned.
   - The NRUF calculation that excludes intermediate numbers should remain as is.

3. **The CPUC and MPSC support the following change to the utilization calculation.**

   'Intermediate Numbers' remains a standalone category and is specifically itemized as being removed from the denominator of the utilization formula. This should be so changed in CFR 47§52.15(g)(3)(ii) and so stated in the utilization calculation on the MTE worksheet. This would then align with the present NRUF treatment.